

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- against - : **MEMORANDUM DECISION**

JOHNNY MARTINEZ, : 99-cr-1048-4 (DC)

Defendant. :

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APPEARANCES: AARON M. GOLDSMITH, ESQ.  
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New York, NY 10007  
Attorney for Defendant

CHIN, Circuit Judge:

On September 25, 2003, following a jury trial, defendant Johnny Martinez was convicted of (1) conspiracy to commit murder-for-hire, in violation of 18 U.S.C. § 1958, and (2) use of a firearm in connection with a crime of violence, in violation of 18 U.S.C. § 924(c). *See* Dkt. 86. I sentenced Martinez to life imprisonment on the conspiracy count and I also imposed a consecutive term of ten years' imprisonment for the firearm conviction. *See id.* Following the U.S. Supreme Court's decision in *United States v. Davis*, 588 U.S. 445 (2019), I vacated Martinez's firearm conviction and the associated sentence of imprisonment. Dkt. 251 at 4-5, 9.

For the third time since I sentenced him, and the second time in the past thirteen months, Martinez has filed a motion for a sentence reduction, commonly

known as a motion for compassionate release, under 18 U.S.C. § 3582(c)(1)(A) as modified by the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (Dec. 21, 2018). *See* Dkt. 267 (the "First Motion"); Dkt. 290 (the "Second Motion"); Dkt. No. 301 (the "Motion"). Martinez requests that his sentence be reduced to "time served" or 300 months. Dkt. 301 at 4. For the reasons set forth below, the motion is DENIED.

I assume familiarity with the facts and procedural history of this case, which I have set forth in detail in several prior decisions. *See United States v. Martinez*, No. 99-cr-1048-4, 2021 WL 1143744, at \*1-2 (S.D.N.Y. Mar. 24, 2021); Dkt. 274 at 2-4; *see also United States v. Banks*, 464 F.3d 184, 185-90 (2d Cir. 2006) (denying Martinez's direct appeal of the judgment of conviction and sentence). I also assume familiarity with the legal framework relevant to motions for sentence reductions under Section 3582(c)(1)(A), which I have also previously set forth. *See* Dkt. 274 at 4-6.

When I denied Martinez's First and Second Motions, I concluded that, although it was a close question, "his health concerns together with his rehabilitation efforts establish[ed] extraordinary and compelling reasons" for a sentence reduction. Dkt. 274 at 8; *see also* Dkt. 291 at 4. But I also concluded that the factors set forth in 18 U.S.C. § 3553(a) weighed against a sentence reduction because of the nature of Martinez's crime, his criminal history and prison disciplinary record, and the need for Martinez's sentence to promote deterrence and respect for the law. *See* Dkt. 274 at 9; Dkt. 291 at 5-7.

In his newly filed Motion, Martinez continues to argue that he is remorseful for his role in the death of Johan Pena-Perez and the shooting of Nilton Duran, that he has undergone substantial rehabilitation and has taken advantage of educational and vocational programs while in prison, that his advanced age makes it significantly less likely that he will reoffend if released, and that his sentence is excessive in comparison to sentences imposed on defendants convicted of similar conduct. *See* Dkt. 267 at 7-21, 41-45; Dkt. 290 at 5-13, 21-24; Dkt. 301 at 4, 6-8, 20, 35. He also renews his argument that he is at an increased health risk due to COVID-19.<sup>1</sup> *See* Dkt. 267 at 18-21; Dkt. 301 at 4, 20. Martinez is now sixty-one years old and has been incarcerated for almost twenty-two years. *See* Inmate Locator Service, BOP Registration no. 52655-054, Fed. Bureau of Prisons, <https://www.bop.gov/inmateloc/>; Presentence Investigation Report ("PSR") ¶ 29. Martinez also argues, for the first time, that release is warranted based on the harsh prison conditions at his facility, Dkt. 301 at 25-27, new policy guidance from the U.S. Sentencing Commission, which adds "unusually long sentence[s]" to its list of suggested extraordinary and compelling reasons, and his likely deportation upon release, *id.* at 7, 16-17; U.S.S.G. § 1B1.13(b)(6). Martinez's Motion is accompanied by an "Inmate Education Data Transcript" dated June 27, 2023, an "Inmate History Record" dated June 27, 2023, and a "UNICOR Work Evaluation Record" for the

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<sup>1</sup> Martinez does not renew his argument that he was unaware of his co-conspirators' criminal intentions at the time of the crime or that he fled the United States out of fear of retaliation from the organization that had ordered Pena-Perez's murder. *See* Dkt. 290 at 21-22.

period of May 1, 2022 through November 1, 2022. *See* Dkt. 301-1. Martinez submitted identical versions of these BOP documents with his second motion for compassionate release. *See* Dkt. 290 at 88-94 (Exhibit J, Exhibit K).

I find, as I did with his First and Second Motions that, "[g]iving Martinez the benefit of the doubt," he has proffered extraordinary and compelling reasons rendering him eligible for a sentence reduction. Dkt. 274 at 6-8; *see* 18 U.S.C. § 3582(c)(1)(A)(i). Nonetheless, Martinez's new arguments do not change the analysis contained in my decisions denying the First and Second Motions. I continue to conclude that the Motion should be denied because the applicable § 3553(a) factors, considered together, do not support early release.<sup>2</sup>

The nature and circumstances of Martinez's offense, along with his history and characteristics, weigh against a sentence reduction. Martinez was convicted of a crime of the "most serious nature" -- for participating in "a gang-related hit that resulted in the death of Pena-Perez and serious injuries to Duran." Dkt. 274 at 9. Martinez has a

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<sup>2</sup> It is unclear whether Martinez has exhausted his remedies before filing this Motion. Martinez states that he made a request for compassionate release to the warden of the prison that was denied on December 5, 2023. Dkt. 301 at 9. But he does not provide any documentation related to this renewed request. A number of courts have held that a defendant's "statement attesting to exhaustion on its own, is insufficient to satisfy this requirement." *United States v. Johnson*, 671 F. Supp. 3d 265, 271 (E.D.N.Y. 2023) (collecting cases). In any event, I do not decide whether Martinez has exhausted his remedies because I do not find that the § 3553(a) factors are satisfied. *See United States v. Keitt*, 21 F.4th 67, 73 (2d Cir. 2021) (affirming district court's denial of compassionate release in "sole reliance on the applicable § 3553(a) factors" because "if a district court determines that one of [the three] conditions [required for compassionate release] is lacking, it need not address the remaining ones"); *see also United States v. Saladino*, 7 F.4th 120, 121 (2d Cir. 2021) (holding that § 3582(c)(1)(A)'s "exhaustion requirement is not a jurisdictional limitation on the court's power to consider [the] motion").

history of trafficking narcotics and fled to the Dominican Republic while on bail in this case, spending five years as a fugitive in another country. Dkt. 251 at 8-9. Accordingly, I concluded at sentencing, and in subsequent related decisions, that a life sentence for Martinez's crime under Count One was "not only a reasonable sentence, but . . . the appropriate sentence." Dkt. 89 at 16.

A sentence reduction would also undermine the goals of deterrence and the need to protect the public from further crimes of the defendant. In denying Martinez's Second Motion, I noted that his record of rehabilitation was worthy of acknowledgement but "ha[d] not been exemplary." Dkt. 291 at 5. I also observed that while Martinez's PATTERN recidivism risk assessment scores had decreased since he filed his First Motion, his eleven disciplinary infractions, including a charge for introducing drugs and alcohol into the prison as recently as September 2021, were of great concern in light of his history of drug trafficking. *Id.*

Martinez has not provided a current disciplinary record or PATTERN score with his third request for compassionate release. I am therefore unable to determine whether Martinez has incurred any infractions in the thirteen months since he last moved for a sentence reduction. I thus continue to believe that while "his risk of recidivism has decreased as he has aged, . . . it is not negligible." *Id.* at 7 (internal citations omitted). I also continue to find that the nature of Martinez's infractions -- more than half have involved drugs, alcohol, giving or accepting money without

authorization, and exchanging money for contraband -- suggest "that [Martinez] has not ceased to deal in contraband goods." *Id.*

Martinez argues that the unduly harsh conditions of his confinement warrant his release because it amounts to a sentence that is disproportionate to the offense and violates several of his constitutional rights under the Fifth, Eighth, and Fourteenth Amendments. Dkt. 301 at 25, 27. But while harsh prison conditions can sometimes constitute extraordinary and compelling reasons for release, *see, e.g., United States v. Snype*, 683 F. Supp. 3d 351, 362-63 (S.D.N.Y. 2023), any harsh conditions here do not change the balancing of the § 3553(a) factors.

To be sure, one of the § 3553(a) factors is "the need to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." 18 U.S.C. § 3553(a)(2)(D). This factor, however, is outweighed in Martinez's case by the combination of the other § 3553(a) factors, including "the nature and circumstances of the offense and the history and characteristics of the defendant," *id.* § 3553(a)(1), and "the need for the sentence imposed to reflect the seriousness of the offense," "to afford adequate deterrence," and "to protect the public from further crimes of the defendant," *id.* § 3553(a)(2). Moreover, the constitutional challenges that Martinez raises with respect to these prison conditions are not properly before the Court on a motion for compassionate release. *See, e.g., Jiminian v. Nash*, 245 F.3d 144, 146 (2d Cir. 2001) (observing that a habeas petition under

§ 2241 is the appropriate vehicle for challenging the constitutionality of a prisoner's conditions of confinement).

Martinez's next argument regarding the length of his sentence also lacks merit. He continues to assert that his sentence is excessive in comparison to sentences imposed on defendants convicted of similar conduct. He also argues, for the first time, that the Sentencing Commission's guidance on "unusually long sentence[s]" supports his release. *See* U.S.S.G. § 1B1.13(b)(6).

The U.S. Sentencing Commission's policy statement, effective November 1, 2023, and later made retroactive, affords guidance to courts in considering whether to reduce a sentence for extraordinary and compelling reasons. *See* U.S.S.G. § 1B1.13. Subsection (b)(6) of the policy statement provides that an "unusually long sentence" may constitute an extraordinary and compelling reason where the defendant "has served at least 10 years of the term of imprisonment" and there has been a "change in the law" that produces "a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed." *Id.* § 1B1.13(b)(6).

Assuming that Section 1B1.13(b)(6) is valid and applicable,<sup>3</sup> it would at most provide an additional extraordinary and compelling basis to support Martinez's eligibility for release, but it would not alter my decision to deny the motion under the

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<sup>3</sup> The validity of Section 1B1.13(b)(6) has been challenged by the government in several recent cases; however, the Second Circuit has not yet ruled on this issue. *See, e.g., United States v. Pierce*, No. 11-CR-576 (PKC), 2024 WL 2219739, at \*8 (S.D.N.Y. May 15, 2024).

§ 3553(a) statutory sentencing factors. Moreover, I am not persuaded that Section 1B1.13(b)(6) applies to Martinez's circumstances. Martinez was involved in a pre-meditated offense that resulted in death, triggering 18 U.S.C. § 1958, which provides for a sentence of "death or life imprisonment." Section 1958 continues to provide for such a sentence; thus, there has been no change in the law resulting in a gross disparity between the sentence I gave Martinez and what it would be if it were imposed today. For these same reasons, I find, as I did denying Martinez's First and Second Motions, that Martinez's sentence is "not excessive in relation to the offense of which he was convicted." Dkt. 274 at 8; Dkt. 291 at 5.

Finally, the fact that Martinez may be deported upon his release also does not warrant a sentence reduction. Dkt. 301 at 7. Martinez points to several cases where courts concluded that a removal order weighed in favor of release. *Id.* The defendants in each of these cases, however, had committed nonviolent crimes. *See United States v. Barriga-Beltran*, No 19-cr-01116 (JS), 2021 WL 1299437, at \*3 (E.D.N.Y. Apr. 7, 2021) (convicted of possession with intent to distribute); *United States v. Barron*, 2020 WL 4196194, at \*1 (C.D. Cal. July 9, 2020) (conviction for involvement in drug conspiracy); *United States v. Ledezma-Rodriguez*, 2020 WL 3971517, at \*8 (S.D. Iowa July 14, 2020) (granting release to "non-violent, low-level offender with no ties to large-scale criminal organizations or drug cartels"). By contrast, Martinez was convicted of participating in a murder-for-hire conspiracy that resulted in the death of one man and the serious



injury of another. Given the "most serious nature" of Martinez's crime, Dkt. 274 at 9, and his prison disciplinary record, removal in this case would not protect the public from further crimes of the defendant. *See. e.g., United States v. Ahmad*, No. 05-cr-00019 (DC), 2021 WL 3550229, at \*2 (S.D.N.Y. 2021); *United States v. MacCallum*, 511 F. Supp. 3d 419, 428 (W.D.N.Y. 2021).

Upon weighing the factors, I continue to believe that the goals of deterrence, respect for the law, the interest of justice, and the need to protect the public require a sentence of life imprisonment. For these reasons, the Motion is hereby DENIED.

SO ORDERED.

Dated: New York, New York  
January 6, 2025



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DENNY CHIN  
United States Circuit Judge  
Sitting by Designation